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Supreme Court, U.S.
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No. 08-___

IN THE

Supreme Court of the United States

AGFA CORPORATION,
Petitioner,

v.

UNITED STATES,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Federal Circuit erred in affirming a tariff classification for imported printing plates that was not based upon the plain language of the U.S. tariff statute, but was instead based on the directly conflicting, non-binding, international interpretive guidance issued by the World Customs Organization, an international body which issues non-binding guidance that is not approved or adopted by Congress.

RULE 29.6 STATEMENT

Agfa Corporation is a wholly-owned subsidiary of Agfa-Gevaert NV. Agfa-Gevaert NV is a publicly-held company whose stock is listed on the Brussels Stock Exchange.

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IN THE

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OPINIONS BELOW

The opinion of the Court of Appeals for the Federal Circuit is reported at 520 F.3d 1326, and is reproduced in the appendix at 1a. The Federal Circuit's unreported order denying rehearing and rehearing en banc is reproduced in the appendix at 10a. The opinion of the Court of International Trade is reported at 491 F. Supp. 2d 1317, and is reproduced in the appendix at 11a.

JURISDICTION

The judgment of the court of appeals was entered on March 24, 2008. Petitioner filed a petition for

rehearing and rehearing en banc, which was denied on June 4, 2008. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

Section 1202 of Title 19, U.S. Code, provides for the following tariff classifications, which are relevant to this case:

Heading 3701

3701 Photographic plates and film in the flat, sensitized, unexposed, of any material other than paper, paperboard or textiles; instant print film in the flat, sensitized, unexposed, whether or not in packs:

3701.10.00 For X-ray

* * *

3701.20.00 Instant print film

* * *

3701.30.00 Other plates and film, with any side exceeding 255 mm

Heading 8442

8442 Machinery, apparatus and equipment....for type-founding or typesetting, for preparing or making printing blocks, plates, cylinders or other printing components; printing type, blocks, plates, cylinders and other printing components; blocks, plates, cylinders and lithographic stones, prepared for printing purposes (for example, planed, grained or polished), parts thereof

* * *

8452.50	Printing type, blocks, plates, cylinders and other printing components; blocks, plates, cylinders and lithographic stones, prepared for printing purposes (for example, planed, grained or polished):
8452.50.10	Plates

STATEMENT

1. a. Duty rates for products imported into the United States are determined under the U.S. tariff statute, the Harmonized Tariff Schedule of the United States (HTSUS), 19 U.S.C. § 1202. The HTSUS describes items and provides the applicable duty rate for each item described.

b. Heading 8442 of the HTSUS provides the tariff classification for printing plates, both by name and by use. More specifically, subheading heading 8442 is divided into three sections: the first classifies machinery used to make printing plates; the second classifies printing plates by name; and the third classifies printing plates by use. Subheading 8442.50 provides specifically for "Printing...plates." There are no limitations or exclusions on the types of printing plates that are described under heading 8442.

2. The HTSUS is modeled on the international Harmonized Commodity Description & Coding System (HS),[1] which was created by and is modified and issued by the World Customs Organization (WCO).

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[1] World Customs Organization, *International Convention on the Harmonized Commodity Description and Coding System*, done on June 14, 1983.

The WCO is an intergovernmental organization exclusively focused on customs matters.

3. The HS is an international product nomenclature comprising about 5,000 commodity groups, each identified by a six-digit code. Each country that implements the HS does so differently. The U.S. subdivides the six-digit codes into more specific 8- and 10-digit classifications.

4. a. As a supplement to the HS, the WCO issues a 4-volume set of Explanatory Notes[2] to provide interpretive guidance relating to the products classified under the HS. The Explanatory Notes are commentaries periodically issued by the Harmonized System Committee[3] and adopted by the WCO Council (the body that governs the WCO). The Explanatory Notes are changed from time to time. The Explanatory Notes are not part of the HTSUS and have never been approved or adopted by Congress.

b. In direct conflict to the language of heading 8442 of the HTSUS, printing plates, the WCO Explanatory Notes provide that "[s]ensitized plates" – which would include virtually all printing plates in commercial use today – are excluded from heading

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[2] World Customs Organization, *Harmonized Commodity Description & Coding System Explanatory Notes* (3d ed. 2002).

[3] The Harmonized System Committee works under the direction of the WCO Council. The Committee is charged with working with the World Trade Organization (WTO), the United Nations Statistics Division (UNSD), the International Chamber of Commerce (ICC), the United Nations Environmental Program (UNEP), the Convention on International Trade in Endangered Species of wild fauna and flora (CITES), the Organization for the Prohibition of Chemical Weapons (OPCW) and the Rotterdam Convention on the Prior Informed Consent (PIC).

8442 and are considered photographic plates for tariff purposes.

5. Petitioner Agfa imports, *inter alia,* offset lithographic printing plates for sale to newspaper, magazine, and other commercial printing companies. This merchandise is commonly and commercially known as "printing plates." There is no other use for these plates other than as commercial printing plates run on printing presses.

6. Upon importation, Customs found that Agfa's printing plates did not qualify as "printing plates" for purposes of heading 8442, HTSUS. Rather, based solely upon the international Explanatory Notes – which are in direct conflict with the plain language of the U.S. statute – Customs classified the plates as "photographic plates" under HTSUS heading 3701. Agfa timely protested this classification. The Customs Service denied Agfa's protests, and Agfa appealed to the Court of International Trade (CIT).

7. The CIT found that the printing plates were not *prima facie* classifiable under HTSUS 8442, the provision for printing plates. In reaching this decision, the CIT skipped over the plain language of the tariff statute and relied on the conflicting WCO Explanatory Notes, which state that "[s]ensitized plates" are excluded from heading 8442 [printing plates] and are covered under heading 3701.

8. Agfa appealed the CIT decision to the Federal Circuit. The Federal Circuit affirmed the CIT's ruling, holding that, despite the fact that "the subject merchandise is referred to in the marketplace as 'printing plates,' a term included in heading 8442,..." that the printing plates at issue here are not properly classifiable under 8442 because the Explanatory Notes

limit application of heading 8442 to plates that are not sensitized, and further provide that heading 3701 is the proper classification for sensitized plates.

Thus, Customs and both courts below relied exclusively on international guidance – the non-binding, interpretive Explanatory Notes – in making and affirming the classification of Agfa's printing plates. In doing so, Customs and the courts below adopted the unique definition of printing plates found only in the WCO Explanatory Notes rather than following the plain language of the U.S. statute.

Agfa filed a Combined Petition for Rehearing and Petition for Rehearing En Banc with the Federal Circuit, which was denied on June 4, 2008.

REASON FOR GRANTING THE PETITION

This case concerns a direct conflict between a U.S. statute and the international explanatory guidance issued by an international organization, the WCO. The United States belongs to an ever-increasing number of international agreements, and participates in international bodies that create, revise and sponsor such agreements including providing interpretations and guidance of these agreements. While the Congress adopts legislation to implement these agreements, Congress does not adopt the agreement or the international guidance that interpret these agreements.

The issue of how to resolve conflicts between the guidance issued by an international body sponsoring such agreements and the implementing U.S. statutes has never before been considered by this Court. Here, the issue is whether such non-binding international Explanatory Notes, which have not been adopted by

Congress, may form the exclusive basis for the interpretation of the U.S. tariff statute, particularly when the international guidance is directly contradictory to plain U.S. statutory language. Where an issue is important to the proper administration of a statute, and is an issue of first impression, grant of a writ of certiorari is appropriate. *See Reading Co. v. Brown*, 391 U.S. 471, 475 (1968).

Petitioner Agfa respectfully submits that the Federal Circuit's use of the WCO Explanatory Notes, as the exclusive basis for affirming a tariff classification, rather than applying the conflicting, plain language of the U.S. statute, was a clear departure from fundamental rules of statutory construction that have long been recognized by this Court. In its decision below, the Federal Circuit did not apply the plain language of the tariff statute, "printing plates" found in HTSUS heading 8442, but instead relied exclusively on an extrinsic, international secondary source, by adopting the unique definition of printing plates in the WCO Explanatory Notes. As a matter of U.S. law, Agfa submits that these international standards that have never been adopted by Congress may not be used to change the common meaning of a U.S. statute.[4]

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[4] Both Finland and Germany have recognized the futility of the Explanatory Notes to Chapters 37 and 84 as they pertain to printing plates like the ones at issue, and have accordingly classified printing plates in heading 8442 of their respective tariff schedules. See The European Commission, European Binding Tariff Information, BTI Ruling No. FI412/301/04 (Finland Apr. 2, 2005), available at http://ec.europa.eu/taxation_customs/dds/cgi-bin-ebtidet?Lang=EN&reference=FI412/301/04; BTI Ruling No. DEM/2725/07-1 (Germany Mar. 5, 2007), available at http://ec.europa.eu/taxation_customs/dds/cgi-bin-ebtidet?Lang= EN & reference=DEM/2725/07-1.

The products at issue in this case are commonly and commercially known as printing plates, and they are never described as photographic plates. The imported printing plates are used exclusively for commercial printing – specifically, offset lithography – and there is no other use for these plates other than as commercial printing plates run on printing presses.

Heading 8442 of the USTUS speaks plainly to the classification of printing plates, without any exclusions. Indeed, in a deposition leading up to the CIT trial for this matter, the Customs National Import Specialist for Chapter 84 testified that Customs' classification of Agfa's printing plates relied solely on the international Explanatory Notes. Furthermore, the Federal Circuit acknowledged that "the subject merchandise is referred to in the marketplace as 'printing plates,' a term included in heading 8442,..[.]." As Chief Justice Marshall said long ago, "Where there is no ambiguity in the words, there is no room for construction." *U.S. v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 95-96 (1820). And as Justice Brennan said more recently, "A statute is not 'a nose of wax to be changed from that which the plain language imports. . . .'" *Nat'l Labor Relations Bd. v. Catholic Bishop of Chicago*, 440 U.S. 490, 518 (1979) (Brennan, J., dissenting).

Given the unambiguous language of heading 8442, there is no need to resort to extrinsic interpretative aids to construe the statute, such as WCO's Explanatory Notes. When interpreting statutes, "the beginning point must be the language of the statute, and when a statute speaks with clarity to an issue, judicial inquiry into the statute's meaning, in all but the most extraordinary circumstance, is finished."

Estate of Cowart v. Nicklos Drilling Co., 505 U.S. 469, 475 (1992). *See also* Laurence H. Tribe, Comment, *in* Antonin Scalia, A Matter of Interpretation 66 (1997) ("[I]t is the *text's* meaning, and not the content of anyone's expectations or intentions, that binds us as law.").

This result is particularly the case with extrinsic interpretive aids such as the Explanatory Notes. As noted above, the Explanatory Notes are a living document created by the WCO to provide interpretive guidance relating to product classifications under the HS (the international product classification system). While the HTSUS is based upon the HS, the WCO Explanatory Notes are non-binding; they are not part of the HTSUS; and have never been approved or adopted by Congress.

Consequently, the Federal Circuit committed reversible error by ignoring the plain-language classification of printing plates under HTSUS heading 8442, and by instead relying exclusively on a unique definition in the WCO Explanatory Notes to affirm a classification as photographic plates under heading 3701. The Federal Circuit's departure from bedrock U.S. legal principles of statutory construction by favoring non-binding (and conflicting) guidance issued by an international body over the plain language of a U.S. statute warrants review by this Court. Petitioner Agfa Corporation respectfully submits that this petition for Writ of Certiorari be granted to resolve the issue of whether the lower courts' reliance on international, non-binding interpretive guidance over a conflicting, plainly-worded U.S. statute was appropriate.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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September 2008

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

2007-1430

AGFA CORPORATION,
Plaintiff-Appellant,

v.

UNITED STATES,
Defendant-Appellee.

Kenneth G. Weigel, Alston & Bird LLP, of Washington, DC, argued for plaintiff-appellant. With him on the brief were *Paul F. Brinkman* and *Jeffrey M. Schwartz*.

Mikki Graves Walser, Senior Trial Counsel, International Trade Field Office, Commercial Litigation Branch, Civil Division, United States Department of Justice, of New York, New York, argued for defendant-appellee. With her on the brief were *Jeanne E. Davidson*, Director, of Washington, DC, and *Barbara S. Williams*, Attorney-in-Charge, of New York, New York. Of counsel on the brief was *Michael W. Heydrich*, Office of Assistant Chief Counsel, International Trade Litigation, United States Customs and Border Protection, of New York, New York.

Appealed from: United States Court of International Trade

Chief Judge Jane A. Restani

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

2007-1430

AGFA CORPORATION,
Plaintiff-Appellant,

v.

UNITED STATES,
Defendant-Appellee.

Appeal from the United States Court of International Trade in Case No. 05-00352, Chief Judge Jane A. Restani.

DECIDED: March 24, 2008

Before LOURIE, *Circuit Judge*, CLEVENGER, *Senior Circuit Judge*, and PROST, *Circuit Judge*.

LOURIE, *Circuit Judge*.

Agfa Corporation ("Agfa") appeals from the decision of the United States Court of International Trade granting final judgment in favor of the United States and holding that United States Customs and Border Patrol ("Customs") properly classified imported metal plates coated with a photosensitive emulsion under subheading 3701.30.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Because the Court of International Trade correctly classified the merchandise, we affirm.

BACKGROUND

The subject merchandise consists of thin planed and grained aluminum sheets coated on one side with a photosensitive polymer layer and used for offset lithographic printing. All of the subject sheets have at least two sides measuring greater than 255 mm. In order to prepare the sheets for printing, a machine uses light, typically in the form of a laser, to either harden the areas of the polymer layer corresponding to the printed image or soften the areas of the polymer layer not corresponding to the image, depending on the specific polymer in use. The sheet is then washed to remove the softer, non-image areas. The prepared sheet is then wrapped around a cylinder within the printing press. During operation of the printing press, the sheet is first coated by a fine film of a water-based solution that adheres to the exposed aluminum and then by ink that adheres only to the remaining polymer. The oil-based ink and water solution do not mix. The ink transfers from the sheet to a blanket cylinder and then from the blanket cylinder to the paper.

At issue are twenty-six importations, consisting of five specific models, of the subject merchandise entered into the United States by Agfa between September 29, 2003, and November 2, 2003. Customs classified the merchandise under subheading 3701.30.00, covering "Photographic plates and film in the flat, sensitized, unexposed, of any material other than paper, paperboard or textiles . . . : Other plates and film, with any side exceeding 255 mm" with a 3.7% ad valorem duty. Agfa filed a protest of Customs' decision that Customs subsequently denied.

On June 8, 2005, Agfa filed an action in the Court of International Trade protesting the final decision of Customs and asserting that the subject merchandise

was properly classifiable under subheading 8442.50.10, covering "printing . . . plates . . . : Printing . . . plates . . . : Plates," and was thus duty free.

The Court of International Trade held that the plates were prima facie classifiable under heading 3701, but not under heading 8442, and that Customs therefore properly classified the merchandise under subheading 3701.30.00. The court stated that there was no dispute between the parties that the plates, as imported, were flat, sensitized, and unexposed and had at least two sides measuring greater than 255 mm. The court determined that the specific definition of "photographic" in Note 2 to Chapter 37 counseled against finding "photographic plate" to be a term of art. The court also determined that Agfa's proposed definition of "photographic plate," requiring a glass substrate and allegedly based on commercial understanding of the term, was contrary to the plain language of heading 3701 stating that "photographic plates" may be "of any material other than paper, paperboard or textiles." The court then held that the imported plates met the Note 2 definition of "photographic" because the use of a laser to create the desired image in the polymer layer meant that light was used to indirectly create the printed image. The court also observed that the Explanatory Notes for heading 3701 indicate that "photographic plates" may be made from a variety of materials and used in photomechanical processes. The court determined that heading 8442, in contrast, includes no reference to photosensitive materials, and the Explanatory Notes for heading 8442 specifically exclude plates coated with a photographic emulsion.

Agfa timely appealed to this court. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(5).

DISCUSSION

"The ultimate issue as to whether particular imported merchandise has been classified under an appropriate tariff provision is a question of law which we review de novo." *Sports Graphics, Inc. v. United States*, 24 F.3d 1390, 1391 (Fed. Cir. 1994). A classification decision involves two underlying steps: (1) determining the proper meaning of the tariff provisions, which is a question of law; and (2) determining which heading the particular merchandise falls within, which is a question of fact. *Cummins Inc. v. United States*, 454 F.3d 1361, 1363 (Fed. Cir. 2006)

Agfa argues that the Court of International Trade erred and that the imported plates should be classified under subheading 8442.50.10. Agfa states that because the merchandise is used for printing, and sold and referred to in the trade as printing plates, it falls under the plain language of heading 8442 for "printing . . . plates." Agfa also argues that the court erred in giving undue weight to the Explanatory Notes for heading 8442 because the Notes are not binding and the specific Note at issue is inconsistent with the plain language of heading 8442. Agfa adds that, unlike "photographic," the term "photographic plate" is not defined in the notes to Chapter 37, and the term cannot be broadened to capture merchandise clearly recited in another heading. Agfa argues that the court should therefore have relied on the commercial understanding of the term "photographic plates." Finally, Agfa argues that even if the merchandise is prima facie classifiable under both heading 3701 and 8442, heading 8442 prevails under General Rule of Interpretation 3 as the more specific provision.

The government responds that Customs and the Court of International Trade correctly classified the

merchandise under subheading 3701.30.00. The government argues that heading 8442 does not describe or make provision for unexposed plates with a photosensitive surface. The government adds that, while not binding, the Explanatory Notes are persuasive authority, and they specifically exclude plates with photosensitive coatings from heading 8442, indicating that heading 3701 is the appropriate heading for such merchandise. Also, because the plates have a photosensitive surface that allows visible images to be formed indirectly by the action of light, they satisfy the definition of "photographic" set forth in Note 2 to Chapter 37.

We agree with the government that the Court of International Trade correctly granted judgment affirming Customs' classification of the merchandise. We first set out the relevant portions of the HTSUS, as follows:

3701 Photographic plates and film in the flat, sensitized, unexposed, of any material other than paper, paperboard or textiles; instant print film in the flat, sensitized, unexposed, whether or not in packs:

3701.10.00 For X-ray

* * *

3701.20.00 Instant print film

* * *

3701.30.00 Other plates and film, with any side exceeding 255 mm

* * *

8442 Machinery, apparatus and equipment . . . for type-founding or typesetting, for preparing or making printing blocks, plates, cylinders or other printing components; printing type, blocks,

plates, cylinders and other printing components; blocks, plates, cylinders and lithographic stones, prepared for printing purposes (for example, planed, grained or polished); parts thereof

* * *

8452.50 Printing type, blocks, plates, cylinders and other printing components; blocks, plates, cylinders and lithographic stones, prepared for printing purposes (for example, planed, grained or polished):

8452.50.10 Plates

Examination of its heading shows that the imported plates are prima facie classifiable under heading 3701. The language of heading 3701 is broad, covering "[p]hotographic plates . . . of *any* material other than paper, paperboard or textiles." (Emphasis added.) Agfa's argument that according to commercial use a photographic plate must be rigid and transparent would render heading 3701's qualification excluding paper, paperboard, and textiles unnecessary. Further, the fact that the heading specifically excludes certain materials but does not recite a transparency requirement belies Agfa's position.

The imported goods also meet the definition of "photographic" in Note 2 to Chapter 37. Note 2 provides that the word "'photographic' relates to the process by which visible images are formed, directly or indirectly, by the action of light or other forms of radiation on photosensitive surfaces." After washing, the action of the laser results in the creation of the visible image on the aluminum plate that will be used to transfer the ink that will create copies of that image on paper. Thus, a visible image is formed directly on

the photosensitive surface by the action of light on that surface, and visible images are formed indirectly on paper by the action of light on that surface. The merchandise is thus photographic.

The Explanatory Notes to heading 3701 also support the conclusion that the merchandise is prima facie classifiable under that heading. "Explanatory notes are not legally binding but may be consulted for guidance and are generally indicative of the proper interpretation of a tariff provision." *Degussa Corp. v. United States*, 508 F.3d 1044, 1047 (Fed. Cir. 2007) (*citing Motorola, Inc. v. United States*, 436 F.3d 1357, 1361 (Fed. Cir. 2006)). Contrary to Agfa's argument requiring transparency, the Explanatory Notes for heading 3701 describe "metal or stone (for photomechanical processes)" as "materials commonly used" for goods under that heading. Again, contrary to Agfa's statement that the definition of photographic requires that the light directly cause a chemical reaction that forms the visible image (*e.g.*, light acting through a negative on photographic paper), the Notes state that the included "goods are put to many uses such as . . . [p]hotomechanical process plates of the type used for photoengraving, photolithography, etc." Thus, plates for processes including a mechanical step, such as transfer of ink or engraving, after the action of light on the photosensitive medium are clearly included within heading 3701.

We also agree with the government and the Court of International Trade that the imported plates are not prima facie classifiable under heading 8442. The mere fact that the subject merchandise is referred to in the marketplace as "printing plates," a term included in heading 8442, is by itself insufficient to establish that the imported goods should be classified

under that heading. The wording of heading 8442 is strongly indicative of purely mechanical printing processes. Further, while heading 8442 itself does not foreclose photomechanical printing plates, neither does it specifically identify plates for photomechanical printing. While the language of heading 8442 might allow for some ambiguity, the Explanatory Notes to heading 8442 do not. They directly address the issue under consideration here. The Notes provide that "[s]ensitized plates (e.g., consisting of metal or plastics, coated with a sensitized photographic emulsion, or of a sheet of photosensitive plastics, whether or not affixed to a support or metal or other material) are excluded (heading 37.01)." It is hard to imagine a more definitive statement on the matter before us. The exact goods at issue are specifically described and excluded from heading 8442, and the reader is specifically directed to heading 3701, the heading under which Customs has classified the subject merchandise. As stated above, while the Explanatory Notes are not binding, they are persuasive authority, and Agfa provides no convincing reason to disregard such clearly relevant guidance.

Agfa does not dispute the classification of the imported goods under subheading 3701.30.00, once it is established that they are classifiable under heading 3701.

CONCLUSION

We affirm the Court of International Trade's decision granting judgment in favor of the government and confirming Custom's classification of the imported goods under heading 3701.30.00 of the HTSUS.

AFFIRMED

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

2007-1430

AGFA CORPORATION

v.

UNITED STATES

Wednesday, June 4, 2008

PETITION FOR REHEARING AND
REHEARING EN BANC

Denied.

APPENDIX C

UNITED STATES COURT OF INTERNATIONAL TRADE

Court No. 05-00352

AGFA CORPORATION,

Plaintiff,

v.

UNITED STATES,

Defendant.

OPINION

Before: Jane A. Restani, *Chief Judge*

[After trial, subject merchandise found to be classified properly under subheading 3701.30.00, HTSUS. Judgment for the Defendant.]

Dated: May 21, 2007

Alston & Bird, LLP (*Paul F. Brinkman*, *Jonathan M. Fee*, *Kenneth G. Weigel*, and *Michelle L. Turner*) for the plaintiff.

Peter D. Keisler, Assistant Attorney General, *Barbara S. Williams*, Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, U. S. Department of Justice (*Mikki G. Walser* and *Jack S. Rockafellow*); *Michael W. Heydrich*, Office of the Assistant Chief Counsel, International Trade Litigation, U.S. Customs and Border Protection, of counsel, for the defendant.

Restani, Chief Judge: Plaintiff Agfa Corp. ("Agfa") challenges a determination by the U.S. Customs and Border Protection ("Customs"), classifying certain "plates" used in photolithography under subheading 3701.30.00 of the Harmonized Tariff Schedule of the United States 2003 ("HTSUS") as photographic plates. Agfa contends that the merchandise cannot be classified under heading 3701, HTSUS, which covers photographic and cinematographic goods, and instead should be classified under heading 8442, HTSUS, which covers printing type, blocks, plates, and cylinders. Based on the text of the HTSUS, the definitions provided in the Chapter Notes, and the guidance provided in the Explanatory Notes, the court concludes that the merchandise is classified properly under subheading 3701.30.00, HTSUS, as photographic plates.

FACTUAL BACKGROUND

Agfa is listed as the owner of record of twenty-six entries of the merchandise at issue, certain "plates," which arrived through the Port of Philadelphia between September 29, 2003, and November 2, 2003.[1] The parties agree that the plates are used in a photomechanical printing process. (Parties' Uncontested Facts, ¶ 23, Schedule C to the Pretrial Order.) The plates are composed of two functional layers: the first is a grained and anodized aluminum substrate, and the second is a photosensitive "polymer or emulsion layer." (*Id.* at ¶ 10.) Specifically, the parties agree that the plates here are sensitive to specific wavelengths of light. (*Id.* at ¶¶ 18–22.) As imported, all of the plates are "unexposed" and have at least two sides exceeding 255mm. (*Id.* at ¶¶ 11–12.)

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[1] The plates included five different models: "LAP-V Ultra," "LAP-O Ultra," "N550," "N91," and "N91V." (Parties' Uncontested Facts, ¶ 8, Schedule C to the Pretrial Order.)

At trial, Agfa described the photomechanical printing process, specifically photolithography, for which its plates are used. The plates here are used by printers to create copies based on a "proof," usually a digital file on a computer. (Trial Tr. 61:16–62:21, Dec. 11, 2006.) To prepare a plate for use in a printing press, a laser is used to place images from the proof onto the plate. (*Id.* at 71:5–24). The light from the laser softens the undesired portions of the emulsion while avoiding the areas which compose the desired image.[2] (*Id.*) The plate is then washed, removing the softened emulsion layer and exposing the aluminum below. (*Id.* at 75:1–5.) Once a plate has been exposed, it is bent around a "plate cylinder" and inserted into a printing press. (*Id.* at 82:11–12, 89:12–24.) As the plate cylinder turns, its surface is exposed to a neighboring cylinder carrying water, and to another carrying ink. (*Id.* at 145:11–146:5.) The ink adheres only to the portions of the plate that are still covered by the polymer or emulsion layer. (*Id.*) As the plate cylinder continues to turn, it comes into contact with a "blanket cylinder" which picks up the ink. (*Id.*) The blanket cylinder then rolls the ink onto paper as it is fed through the press. (*Id.*) When a printing run is completed, the plate is usually discarded. (*Id.* at 92:2–6.)

Upon entry, Customs classified the product under subheading 3701.30.00, HTSUS, as "[p]hotographic plates and film in the flat, sensitized, unexposed, of any material other than paper, paperboard or textiles . . . . [o]ther plates and film, with any side exceeding 255 mm."[3] Agfa filed a protest challenging this clas-

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[2] It appears that some lasers work on the opposite principle, hardening portions of the emulsion while leaving the rest soft. (Trial Tr. 71:10–24.)

[3] Subheading 3701.30.00, HTSUS, reads in full:

sification, claiming that the merchandise should have been classified under subheading 8442.50.10, HTSUS, as "blocks, plates, cylinders and lithographic stones, prepared for printing purposes . . . [p]lates . . . [p]laned, grained, polished or otherwise prepared for engraving or impressing."[4]

Customs denied the protest after determining that photosensitive plates used in lithography were classifiable as "photographic plates" under heading 3701, HTSUS, and not as "printing plates" under heading 8442, HTSUS. (Def.'s Post-Trial Br., Addendum C.) Customs based its denial on a prior classification decision that it had issued to Agfa on March 2, 2004. HQ 967087 (May 25, 2004). In that decision, Customs

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3701 Photographic plates and film in the flat, sensitized, unexposed, of any material other than paper, paperboard or textiles; instant print film in the flat, sensitized, unexposed, whether or not in packs:

3701.30.00 Other plates and film, with any side exceeding 255 mm.

[4] Subheading 8442.50.10, HTSUS, reads in full:

8442 Machinery, apparatus and equipment (other than the machine tools of headings 8456 to 8465), for type-founding or typesetting, for preparing or making printing blocks, plates, cylinders or other printing components; printing type, blocks, plates, cylinders and other printing components; blocks, plates, cylinders and lithographic stones, prepared for printing purposes (for example, planed, grained or polished); parts thereof:

Printing type, blocks, plates, cylinders and other printing components; blocks, plates, cylinders and lithographic stones, prepared for printing purposes (for example, planed, grained or polished):

8442.50.10 Plates

8442.50.10.10. Planed, grained, polished or otherwise prepared for engraving or impressing.

concluded that Agfa's printing press plates, called Thermostar plates,[5] were classifiable under heading 3701, HTSUS, in large part due to Note 2 to Chapter 37, which stated that:

> In this chapter the word "photographic" relates to the process by which visible images are formed, directly or indirectly, by the action of light or other forms of radiation on photosensitive surfaces.

Note 2 to Chapter 37, HTSUS.

Customs determined that the laser process used for Thermostar plates constituted "action of light or other forms of radiation" on a surface "sensitized to react to laser light/radiation." HQ 967087 at 4. Because the exposed layer was used to print images, Customs concluded that the plates used light, indirectly, to form visible images. *Id.* Applying this logic, Customs determined that Agfa's plates, like the Thermostar plates, were "photographic" and classifiable under heading 3701, HTSUS. *Id.*

Customs also found that such plates were not classifiable under heading 8442, HTSUS, based on an exclusion contained in an Explanatory Note to heading

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[5] The Thermostar plates contained a layer of grained and anodized aluminum, coated first by a "hydrophobic polymer that is insensitive to light of any wavelength," and then by a thin "thermo-sensitive coating . . . highly sensitive to infrared light." HQ 967087 at 1. "During the image creation process, the top layer undergoes a heat-induced conversion [by] a high-powered laser . . . that removes part of the plate leaving the image to be printed." *Id.* Like the plates at issue in this case, the Thermostar process used a laser to remove a layer from the plate, exposing selected portions of the layer from which the image would be printed. Unlike the plates in this case, the laser was used to produce high temperatures which removed unwanted portions of the top layer.

8442, HTSUS, which provides that "[s]ensitised plates" are classified under heading 3701, HTSUS. World Customs Organization, *Harmonized Commodity Description & Coding System Explanatory* Notes, Explanatory Note 84.42, 1503 (3d ed. 2002) ("Explanatory Note(s)"). Thus, Customs concluded that the merchandise in question was not classifiable under heading 8442, HTSUS. Agfa timely commenced this action challenging Customs's decision, according to the proper procedures.

JURISDICTION AND STANDARD OF REVIEW

Agfa filed a protest with Customs pursuant to 19 U.S.C. § 1515 within 90 days of the liquidation of the entries in question. The protest was denied. Consequently, the underlying administrative prerequisites to judicial review under 28 U.S.C. § 1581(a) are complete.

The meaning and scope of a tariff term is a question of law decided by the court. *Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1308 (Fed. Cir. 2003). Whether a particular article falls within the scope of that tariff term is a question of fact. *H.I.M. / Fathom, Inc. v. United States*, 21 CIT 776, 778, 981 F. Supp. 610, 613 (1997). Where the "review of the classification of the goods collapses into a determination of the proper meaning and scope of the HTSUS terms," as in this case, the court reviews the classification decision *de novo*. *Len-Ron*, 334 F.3d at 1308 (quoting *Aves. in Leather, Inc. v. United States*, 317 F.3d 1399, 1402 (Fed. Cir. 2003)).

DISCUSSION

The classification of merchandise entered into the customs territory of the United States is governed by the General Rules of Interpretation ("GRIs") of the

HTSUS. Under GRI 1, the classification analysis begins with the language of potentially applicable headings. *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1440 (Fed. Cir. 1998). After determining the proper heading, the court looks to the subheadings to find the correct classification for the merchandise. Id. Here, the parties have advanced two HTSUS headings, 3701 and 8442. Thus, the court first determines whether the goods are *prima facie* classifiable under either of these two headings before examining the proper subheading for the subject merchandise.

GRI 1 states that "classification shall be determined according to the terms of the headings and any relevant section or chapter notes." Subsequent GRIs are to be consulted only if the headings "do not otherwise require" a particular classification. Thus, "'a court first construes the language of the heading, and any section or chapter notes in question, to determine whether the product at issue is classifiable under the heading.'" *N. Am. Processing Co. v. United States*, 236 F.3d 695, 698 (Fed. Cir. 2001) (quoting *Baxter Healthcare Corp. of P.R. v. United States*, 182 F.3d 1333, 1337 (Fed. Cir. 1999)); *see also Russell Stadelman & Co. v. United States*, 242 F.3d 1044, 1048 (Fed. Cir. 2001) ("The first step in properly construing a tariff classification term is to determine whether Congress clearly defined that term in either the HTSUS or its legislative history." (citing *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994))). "When a tariff term is not defined in either the HTSUS or its legislative history, the term's correct meaning is its common or dictionary meaning in the absence of evidence to the contrary." *Russell Stadelman*, 242 F.3d at 1048. To determine the common meaning of a term, the court may utilize dictionaries and scientific authorities, as well as its own understanding of the

term. *Lynteq, Inc. v. United States*, 976 F.2d 693, 697 (Fed. Cir. 1992); *Rollerblade, Inc. v. United States*, 282 F.3d 1349, 1352 (Fed. Cir. 2002) ("To determine a term's common meaning, a court may consult 'dictionaries, scientific authorities, and other reliable information sources.'") (quoting *C.J. Tower & Sons v. United States*, 69 C.C.P.A. 128, 673 F.2d 1268, 1271 (1982)).

In addition to relying on its "own understanding of terms used," and "standard lexicographic and scientific authorities," a court may also look to the Explanatory Notes for guidance. *Mita Copystar*, 21 F.3d at 1082. "Although not legally binding on the United States, the Explanatory Notes generally indicate the 'proper interpretation' of provisions within the HTSUS." *H.I.M. / Fathom*, 21 CIT at 779, 981 F. Supp. at 613 (quoting *Lynteq*, 976 F. 2d at 699).

I. Heading 3701, HTSUS

As previously stated, heading 3701, HTSUS, covers "[p]hotographic plates and film in the flat, sensitized, unexposed, of any material other than paper, paperboard or textiles." The parties do not contest that the plates at issue here are flat, sensitized, and unexposed. They also agree that the plates are not composed of paper, paperboard, or textiles. Thus, the remaining issue is whether the merchandise is a "photographic plate" within the meaning of heading 3701, HTSUS.

A. "Photographic Plate" is Not a Term of Art and Cannot be Construed Contrary to the Terms of the Chapter Notes

Agfa claims that the common meaning of photographic plate is "glass substrate that has a silver gelatin emulsion coated on the top." (Pl.'s Post-Trial

Br. 16.) Agfa asserts that "photographic plate" is a term of art commonly understood as "a sheet of material (as glass or plastic) coated with a light-sensitive photographic emulsion." (*Id.* at 6–7 (citation and quotation marks removed).) According to Agfa, "photographic plates" are "discrete product[s] in the art of photography that have recognized intrinsic value" and are characterized by their rigidity and transparency. (*Id.* at 7.) Agfa argues that because "photographic plate" is a term of art, Chapter Note 2 to heading 3701 is irrelevant to the interpretation of the tariff term "photographic plate."

A "term of art" is "a 'word or phrase having a specific, precise meaning in a given speciality, apart from its general meaning in ordinary contexts.'" *Faus Group, Inc. v. United States*, 358 F. Supp. 2d 1244, 1250 (CIT 2004) (quoting *Black's Law Dictionary* 1511 (8th ed. 2004)). Recourse to terms of art is "generally disfavored." *Id.* This is especially so when application of a term of art would circumvent a statutorily provided definition. For instance, in Faus, the parties claimed that "builders' joinery" was a term of art. *Id.* If so, the term could not be defined by "searching through dictionaries for the words 'builders' and 'joinery.'" *Id.* The court rejected this argument, in part because the relevant Explanatory Notes referred to "joinery" on its own. *Id.* at 1251. The court also noted that it was unaware of any "dictionary or other definitions of 'builders' joinery' as a single term." *Id.* Similarly, the court in *Amity Leather Co. v. United States*, 20 CIT 1049, 939 F. Supp. 891 (1996), considered whether the TSUS term "reinforced or laminated plastics" was "an inseparable term of art." *Id.* at 1053, 939 F. Supp. at 895. The court rejected this argument, finding that the TSUS provided separate defi-

nitions for "reinforced plastics" and "laminated plastics." *Id.* at 1054, 939 F. Supp. at 895.

The court's reasoning in *Faus* applies even more strongly in this case. In *Faus*, the presence of a defined term in the Explanatory Notes counseled against adoption of a term of art. Here, it is a Chapter Note that provides a clear, binding, definition of the term "photographic" as relating "to the process by which visible images are formed, directly or indirectly, by the action of light or other forms of radiation on photosensitive surfaces." Note 2 to Chapter 37, HTSUS. Agfa, however, essentially defines photographic as relating only to the "art of photography," and not as referring to more generally applicable photographic processes. This directly contradicts the broad definition provided by Chapter Note 2. While the court does not treat Explanatory Notes as binding, the court is required by GRI 1 to use the Chapter Notes, which are part of the statute, to determine the meaning of tariff headings. See *Ciba-Geigy Corp. v. United States*, 22 CIT 1155, 1162–63, 44 F. Supp. 2d 207, 213–14 (1999) (adhering to the definition provided in a Chapter Note and rejecting arguments that application of the Chapter Note would lead to an anomaly). Further, in interpreting tariff terms, common meanings, including terms of art, are consulted only after a court examines the HTSUS, tariff headings, section and chapter notes, and legislative history. *N. Am. Processing*, 56 F. Supp. 2d at 1179; *see also Ciba-Geigy*, 22 CIT at 1162, 44 F. Supp. 2d at 213 n.6 ("In interpreting tariff headings, it is the tariff definition and specifications, not common or commercial meaning, that is conclusive for classification purposes." (citations omitted)). Thus, Agfa's argument that the court should disregard Chapter Note 2

in favor of a "term of art" understanding is without merit.

Agfa's proposed definition is not only contrary to Chapter Note 2, but it is contrary to heading 3701, HTSUS, itself. Heading 3701, HTSUS, states that plates covered therein can be composed "of any material other than paper, paperboard or textiles." Agfa's proposed definition of "photographic plate" as a rigid and transparent sheet of either glass or plastic places limits upon the heading that are not found within it.[6]

Accordingly, the court rejects Agfa's definition of "photographic plate" as a "discrete product in the art of photography that ha[s] recognized intrinsic value" and is characterized by its rigidity and transparency. (Pl.'s Post-Trial Br. at 7–8.) Instead, the court considers the meanings of the term "photographic" and the term "plate" in order to ascertain the meaning of "photographic plate."

B. The Articles in Question Are *Prima Facie* Classifiable Under Heading 3701, HTSUS

As previously discussed, Chapter Note 2 states that "[i]n this chapter the word '*photographic*' relates to the process by which visible images are formed, directly or indirectly, by the action of light or other forms of radiation on photosensitive surfaces."[7] Note 2 to Chap-

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[6] Additionally, the court has not located a definition of "photographic plate" in commonly-available dictionaries. Agfa also has not provided the court with a resource which defines "photographic plate" as a single term. *See Faus*, 358 F. Supp. 2d at 1251 (noting that "there are no dictionary or other definitions of 'builders' joinery' as a single term," and declining to find a term of art).

[7] Agfa argues that applying this definition of "photographic" would lead to absurd results. Agfa claims that if heading 3701 encompasses all such plates, then "countless products having

ter 37, HTSUS. The parties here agree that Agfa's plates are coated with a photosensitive "polymer or emulsion layer." They also agree that a laser is used to "expose" portions of that surface. "Laser" stands for "light amplification by simulated emission of radiation." *Webster's Third New International Dictionary*, 1274 (3d ed. 1981). While it is evident from the record that the lasers in question do not directly create an "image," the laser is essential in creating the image that will be printed onto paper because it softens or hardens the desired portions of the emulsion, allowing the undesired portions to be washed away. The court finds that this constitutes the use of light to form a visible image indirectly.

In contrast, the HTSUS, Chapter Notes, and legislative history do not provide a definition of the term "plate." Rather, the HTSUS heading merely states that plates covered within the heading can be composed "of any material other than paper, paperboard or textiles." Based on the text of heading 3701, HTSUS, it appears that Congress intended to use a broad definition of plate, encompassing plates composed of a variety of materials. The HTSUS, however, does not include further information regarding plates and

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nothing to do with photography or cinematography would fall within the scope of the 'photographic' goods described in Chapter 37." (Pl.'s Post-Trial Br. 18.) As previously discussed, in so arguing, Agfa ignores the definition of photographic stated in Chapter Note 2. Chapter Note 2 does not mandate that the products covered therein must be used directly in the "art" of photography or cinematography but merely states that goods are photographic if they utilize a "process by which visible images are formed, directly or indirectly, by the action of light or other forms of radiation on photosensitive surfaces." Note 2 to Chapter 37, HTSUS.

thus, the court turns to dictionaries for additional insight.

Dictionaries indicate that a "plate" can be composed of a variety of materials and used for a variety of purposes. The *McGraw-Hill Dictionary of Scientific and Technical Terms* (1974), defines "plate," when used "[i]n photography," as "a sheet of glass coated with a sensitized emulsion." *Id.* at 1184. When used "[i]n printing," a "plate" is defined as "the reproduction of type or cuts in metal or other material; a plate may bear a relief, intaglio, or planographic printing surface." *Id.* A similar distinction is made in *The Focal Encyclopedia of Photography* (3d ed. 1993), which states that, "among photosensitive materials," a "plate" is "a relatively thick, rigid, transparent support for a photosensitive coating." *Id.* at 637. The *Encyclopedia* adds that "[g]lass is the most common material" from which a plate is made, in addition to methyl methacrylate sheets and fused quartz. *Id.* By contrast, the *Encyclopedia* provides that "[i]n photomechanical reproduction," a "plate" is "a sheet of metal, plastic, or paper bearing an image for printing with ink." *Id.* In sum, it appears that plates can be used in photography or in photomechanical reproduction, depending on their composition.

The Explanatory Notes also indicate that heading 3701, HTSUS, covers plates composed of various materials for use in photography and in photomechanical reproduction. While not binding, these notes provide an additional resource for understanding the intent behind particular terms used in the HTSUS. *H.I.M./Fathom*, 21 CIT at 779, 981 F. Supp. at 613; see also H.R. Rep. 100-576, at 549 (1988) (Conf. Rep.), reprinted in 1988 U.S.C.C.A.N. 1547, 1582 (stating that the Explanatory Notes are "generally indicative

of proper interpretation of the various provisions of the Convention"). Here, Explanatory Note A to Chapter 37.01 explicitly states that "for film packs and cut films," the "materials commonly used" are "other plastics," but that "for photomechanical processes," plates are commonly made of "metal or stone." *Explanatory Note* 37.01, at 660. By specifically mentioning photomechanical processes and the differing plate materials used in photomechanical processes, Explanatory Note A indicates that heading 3701, HTSUS, covers plates that are used in photomechanical processes.

If any doubt remains, the Explanatory Notes also state that "goods [covered in this heading] are put to many uses," including "[p]hotomechanical process plates of the type used for photoengraving, photolithography, etc." *Explanatory Note* 37.01, at 660. As previously stated, the parties here agree that the articles in question use photolithography to produce images. Given this specific Explanatory Note, it is evident that heading 3701, HTSUS, covers not only transparent surfaces used to generate photographs but also covers some non-transparent metal or stone surfaces used in engraving and photolithography.[8] *See H.I.M. / Fathom*, 21 CIT at 779, 981 F. Supp. at 613 (stating that Explanatory Notes are "persuasive authority for the Court when they specifically include or exclude an item from a tariff heading").

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[8] Agfa claims that the Explanatory Notes should not be consulted, because the meaning of the statutory text is clear. This statement is difficult to reconcile with its repeated assertion that there is no definition of "photographic plate" in the HTSUS, and that it is necessary to consult expert testimony to establish the meaning of "photographic plate" as a term of art.

Accordingly, the court finds that Agfa's plates possess all of the qualities required for *prima facie* classification under heading 3701, HTSUS.

II. Heading 8442, HTSUS

Agfa claims that its merchandise is classifiable under heading 8442, HTSUS, as "blocks, plates, cylinders and lithographic stones, prepared for printing purposes (for example, planed, grained or polished)." As previously stated, the parties here agree that the photosensitive plates at issue are used in photolithography. Thus, the issue is whether heading 8442, HTSUS, covers photosensitive plates used in photolithography.

Heading 8442, HTSUS, and its Chapter Notes do not address photosensitive plates of the type at issue here and the parties point to no legislative history addressing such. The Explanatory Note to heading 8442, HTSUS, however, does address merchandise of the type at issue here. The Explanatory Note to heading 8442, HTSUS, specifically states that "[s]ensitised plates (e.g., consisting of metal or plastics, coated with a sensitised photographic emulsion, or of a sheet of photosensitive plastics, whether or not affixed to a support of metal or other material) are *excluded (heading 37.01)." Explanatory Note* 84.42, at 1503. Agfa does not dispute that its plates consist of a layer of photosensitive emulsion. Given that Explanatory Notes are "persuasive authority for the Court when they specifically include or exclude an item from a tariff heading," the court holds that the photosensitive plates at issue here are not covered by heading 8442, HTSUS.[9] *H.I.M./Fathom*, 21 CIT at 779, 981 F. Supp. at 613.

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[9] Agfa argues that Customs's position cannot be reconciled with this Court's ruling in *Brother Int'l Corp. v. United States*,

Despite the fact that the Explanatory Note to heading 8442, HTSUS, specifically excludes photosensitive plates, Agfa argues that if photosensitive plates are not included in heading 8442, HTSUS, then it would become an "empty tariff provision" because "[n]early all printing press plates contain a photosensitive layer." (Pl.'s Post-Trial Br. 19–20.) The record, however, shows that letter press technology, which is still in limited use, and mechanical gravure do not utilize a photosensitive layer. (Trial Tr. 86:16–21, 87:24–88:6.) Thus, although heading 8442 may arguably be a less utilized provision and will likely become even less used because it does not cover processes which now dominate the printing industry, id. at 83:24–84:2, heading 8442, HTSUS, is not an "empty tariff provision."[10] The court also notes that the HTSUS

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26 CIT 867, 248 F. Supp. 2d 1224 (2002). In *Brother International*, the court held that printing cartridges were not classifiable as photographic film even though they contained a role of chemically treated film. *Id.* at 875–76, 248 F. Supp. 2d at 1232. The court found that unlike photographic film, the printing cartridges were not the material on which a facsimile machine operates, were not the output of the facsimile machine, and once used, had no intrinsic value but were discarded. *Id.* at 876–77, 248 F. Supp. 2d at 1233. The court concluded that the printing cartridges are instead classified properly as part of a facsimile machine because they are an integral part of the facsimile machines that use them and are designed and constructed exclusively for use in certain facsimile machines. *Id.* at 873, 248 F. Supp. 2d at 1229–30.

Unlike the present case, however, *Brother International* did not concern two separate Explanatory Notes from two different headings which excluded the subject merchandise from one heading and included the subject merchandise in the other heading.

[10] Similarly, Agfa claims that the Explanatory Notes to heading 8442, HTSUS, are internally inconsistent and should be disregarded. Here, Explanatory Note 84.42 first states that

was enacted at a set point in time. If the international drafters wish to adapt to changes, they will, and presumably Congress will enact the changes. The court, however, must apply the HTSUS as it is now.

Accordingly, the subject merchandise is not *prima facie* classifiable under heading 8442, HTSUS.

C. Subheading 3701.30.00, HTSUS

After concluding that the photosensitised plates at issue are properly covered by heading 3701, HTSUS, the court also finds that subheading 3701.30.00, HTSUS, covering "[p]hotographic plates and film in the flat, sensitized, unexposed, of any material other than paper, paperboard or textiles; instant print film in the flat, sensitized, unexposed, whether or not in packs: [o]ther plates and film, with any side exceeding 255 mm," is the proper classification for the subject merchandise.

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heading 8442 includes "[o]ffset printing plates of zinc or aluminum . . . on which the design is reproduced in the flat," *Explanatory Note* 84.42, at 1503, and then later states that "[s]ensitised plates . . . are *excluded*," *id.* Agfa argues that the Explanatory Note is internally inconsistent because all printing plates today are sensitised and thus, no offset printing plates would be included under heading 8442, HTSUS. (Pl.'s Post-Trial Br. 24.) Agfa's argument is inconsistent with an earlier statement in its brief that "nearly all" and not all printing plates contain a photosensitive layer. (*Id.* at 20.) Further, as discussed above, the record does not show that all printing plates contain a photosensitive layer.

CONCLUSION

For the foregoing reasons, Customs' classification of the subject merchandise under subheading 3701.30.00, HTSUS, is sustained. Judgment is entered for the defendant.

/s/ Jane A. Restani
JANE A. RESTANI
Chief Judge

Dated: This 21st day of May, 2007.
New York, New York.

UNITED STATES COURT OF INTERNATIONAL TRADE

Court No. 05-00352

AGFA CORPORATION,

Plaintiff,

v.

UNITED STATES,

Defendant.

JUDGMENT

Before: Jane A. Restani, *Chief Judge.*

This case having been submitted for decision and the Court, after deliberation, having rendered a decision therein; now, in conformity with that decision,

IT IS HEREBY ORDERED that classification of the subject merchandise under subheading 3701.30.00, HTSUS (2003), is sustained. Judgment is entered for the Defendant.

/s/ Jane A. Restani
Jane A. Restani
Chief Judge

Dated: This 21st day of May, 2007.
New York, New York.